

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of                            | ) |                      |
|   | ) |                      |
| Review of Part 87 of the Commission's Rules | ) | WT Docket No. 01-289 |
| Concerning the Aviation Radio Service       | ) |                      |

**COMMENTS OF SITA**

SITA (Societe Internationale de Telecommunications Aeronautiques) hereby comments on one aspect of the Federal Communications Commission's ("Commission" or "FCC") Notice of Proposed Rulemaking ("NPRM") seeking to update its Part 87 Rules with regard to the Aviation Radio Service.<sup>1</sup> One of the issues in this proceeding concerns the need for changes to the licensing rule governing aeronautical enroute services – the so-called “one licensee to a market rule.”<sup>2</sup> As a worldwide provider of aeronautical services, SITA is interested in ensuring that full and fair competition exists in all aeronautical enroute services markets, including the United States. As detailed below, SITA believes that some changes in connection with the “one licensee to a market rule” will enhance competition and thus well serve the public interest.

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<sup>1</sup> *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, FCC 01-303, released October 16, 2001 (hereafter “*Notice*”).

<sup>2</sup> 47 C.F.R. § 87.261(c).

SITA operates in virtually every country around the world providing U.S. and international airlines with data communications services, including airline operational control and administrative communications through its VHF AIRCOM service. This service operates in the 118-137 MHz radio frequency band, which is assigned internationally, as well as in the United States, to aeronautical mobile services. Signals for these services are transmitted directly between aircraft and ground stations linked to SITA's global communications network.

In its comments on the predecessor to this proceeding, SITA had made the case that the United States, consistent with its World Trade Organization ("WTO") Basic Telecommunications Agreement obligations, should eliminate artificial constraints on competition in the aeronautical enroute market, including foreign ownership restrictions and the "one licensee to a market" rule.<sup>3</sup> As SITA demonstrated in those earlier pleadings, the "one licensee to a market" rule conflicted with the United States' commitment to open its markets to competitive entry under the WTO Basic Telecommunications Agreement, conflicted with the United States' efforts to encourage other nations to open their markets to competitive entry, and conflicted with the United States' policy favoring competition over government-sanctioned monopoly. SITA also demonstrated that the "one licensee to a market" rule was not necessary for any spectrum efficiency or public safety concerns.

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<sup>3</sup> See, Comments of SITA in IB Docket No. 97-142 (July 9, 1997); Reply Comments of SITA in IB Docket No. 97-142 (August 12, 1997); Letter from SITA to the Commissioners dated September 16, 1997; and SITA Opposition to Petition for Partial Reconsideration (February 10, 1998).

As Congress made clear when it sought to introduce competition to all segments of the marketplace when it adopted the Telecommunications Act of 1996, the incentives competition creates will bring lower rates, better management, more efficient use of resources, and provide the impetus for research and development, which leads to infrastructure improvement and investment. Indeed, as the Commission recognized in commenting on its regulation of the U.S. international telecommunications market, effective competition in the United States "promotes opportunities for U.S. consumers to choose among multiple suppliers based on innovative offerings, service quality and efficiencies, and price competitiveness."<sup>4</sup>

The "one licensee to a market" rule was originally adopted because of the belief that it was necessary in order to ensure that aeronautical enroute spectrum was used efficiently and managed effectively.<sup>5</sup> To the extent that such a justification may have been valid previously, the record now clearly supports the ability of multiple systems to operate in the band. In numerous other countries, SITA and ARINC compete against each other, without interference problems, to the benefit of the airline customers. Indeed, as a result of the Commission's decision in the proceeding implementing the WTO Basic Agreement, SITA has been able to enter the U.S. aeronautical VHF market, albeit on a limited basis.<sup>6</sup>

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<sup>4</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking (released June 4, 1997) at ¶ 25.

<sup>5</sup> *Notice* at ¶ 14.

<sup>6</sup> SITA has deployed 106 data link ground stations in the United States using the Aeronautical Enroute Service VHF band (all using the 25 kHz channel centered on 136.850 MHz). This network provides coverage for aircraft at and flying between the

SITA recognizes that spectrum management is critical, and that without careful coordination among aeronautical enroute systems, harmful interference could occur. As a result of the “one licensee to a market” rule, ARINC has emerged as the *de facto* frequency coordinator for the aeronautical enroute services in the United States. The problem is that ARINC has been given this role, but without the safeguards the Commission imposes when it formally appoints a frequency coordinator. Moreover, ARINC has an inherent conflict of interest, insofar as it uses the frequencies to provide commercial services that it also coordinates for competitors of its services.<sup>7</sup>

On numerous occasions, the Commission has appointed a frequency coordinator (or coordinators) to undertake the important role of spectrum management in the assignment of specific frequencies to applicants and licensees.<sup>8</sup> In appointing a frequency coordinator, the Commission requires that the coordinator be representative of the eligible applicants, and that the coordinator not discriminate when providing

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major U.S. airports. During 2001, SITA’s enroute network in the United States was used by the aircraft of approximately 90 airlines, although these airlines also use the ARINC stations. SITA operates these stations under FCC licenses held in the name of Aeronautical Radio Inc. SITA has been permitted to use these licenses under a "Service agreement" with Aeronautical Radio, which provides that they retain control over the station to fulfill their obligations as the FCC license holder.

<sup>7</sup> Cf., *Amendment of Parts 2 and 95 of the Commission’s Rules to Create a Wireless Medical Telemetry Device*, 16 FCC Rcd 4543 (2001) at ¶ 8 (ASHE/AHA will have no conflicts of interest because it is not a participant in the market for wireless medical telemetry devices).

<sup>8</sup> See, e.g., *Frequency Coordination in the Private Land Mobile Radio Services*, 103 FCC2d 1093 (1986).

coordination services.<sup>9</sup> SITA does not contend that ARINC is not knowledgeable or otherwise not technically qualified to be a frequency coordinator for this service.

However, SITA is concerned that ARINC's dual role as a coordinator and as a market participant creates significant conflict of interest concerns.

ARINC does have a "separate" subsidiary that provides the frequency coordination services – Aeronautical Radio Inc. However, the Board of Directors of Aeronautical Radio Inc. is the same as the Board of Directors of ARINC INC., the commercial service provider. As a result, the frequency coordination functions are governed by a Board of Directors that includes the CEO and other officers of the service provider (along with representatives of the aircraft operators that use these frequencies). Thus, there is not a degree of separation or independence at present that would provide assurance that the frequency coordination for this band is carried out in a non-discriminatory fashion.<sup>10</sup>

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<sup>9</sup> E.g., *Frequency Coordination in the Private Land Mobile Radio Service* at p. 1101 ("Consistent with the principles that have applied to coordinators since 1958, we will continue to expect coordinators not to discriminate among users and honor all requests for coordination."); *id.* at 1119 ("we are requiring frequency coordinators to ... provide coordination services on a non-discriminatory basis"); *Informal Request of United Telecom Council for Certification as a Frequency Coordinator*, 16 FCC 2d 8436 (2001) at ¶ 3 (factors considered include "how frequency recommendation would be made and whether all applicants would be treated equally"); *Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Device*, 16 FCC Rcd 4543 at ¶ 5 ("a WMTS frequency coordinator must be familiar with the medical telemetry user community, and must make its services available to all parties on a first-come, first-served, and non-discriminatory basis").

<sup>10</sup> Cf., *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, 11 FCC Rcd 9394 (1996) (in selecting relocation clearinghouses analogized by the Commission to a frequency coordinator, the FCC relied on the fact that PCIA proposed "that the clearinghouse will be an independently incorporated subsidiary of PCIA which will have its own by-laws, membership, and Board of Directors").

SITA believes the Commission can allow the “one licensee to a market” rule to remain in effect, so long as it explicitly assigns a frequency coordinator role to ARINC with specific non-discrimination obligations. In addition, in order to ensure that the frequency coordination is run independently of ARINC’s service provider operations, SITA urges the Commission to require Aeronautical Radio Inc. to be governed by an independent Board of Directors consisting of aircraft operator representatives and excluding any representatives or officers of service providers that use these bands.

SITA believes that these measures will provide a framework for non-discriminatory frequency coordination without the need to make wholesale changes to Section 87.261(c). These non-discrimination and independence safeguards will allow multiple aeronautical enroute systems to operate in the 118-137 MHz band without risk of harmful interference. The public interest will be well served by the resulting competition.

Respectfully submitted,

By                     /s/                      
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